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September 30, 2011

Via Email & Certified Mail

Thanne Cox, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Re: Yosemite Creek Superfund Site, San Francisco, California

Dear Ms. Cox:

At the August 18, 2011 meeting regarding the Yosemite Creek Superfund Site (the "Site"), the United States Environmental Protection Agency ("EPA") requested that the PRPs in attendance — which included representatives from the Yosemite Creek PRP Group (the "Group"), the City of San Francisco (the "City"), and the California Department of Parks and Recreation ("DPR") — make a "good faith response" to EPA regarding a proposed non-time critical removal action ("NTCRA") by September 23. This deadline later was extended to September 30.

Since the August 18 meeting, the Group has conducted a further technical review of EPA's 2009 data as well as potential remedial technologies. We've also engaged in productive discussions with other PRPs at the Site, including the City, DPR, and the United States Defense Reutilization and Marketing Service ("DRMS"). We also reached out to the two newly-named PRPs, GE and Sherwin-Williams, both of which we understand are still in the initial stages of evaluating this matter and responding to the Section 104(e) information requests they received from EPA. These discussions have been directed at trying to submit a joint response to EPA. Although several PRPs have expressed an interest in participating in this process, due to the complex nature of this matter and the short time-frame, the PRPs have not been able to coordinate a joint good faith response at this time. However, our discussions are continuing and we are hopeful that we can find a way to work cooperatively with the other PRPs.

This letter then is submitted on behalf of the Group alone and sets forth our good faith response regarding EPA's proposed NTCRA at Yosemite Creek. We propose a workable framework in which the Group, the other PRPs and EPA can further explore the NTCRA option.

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There are many challenges to be overcome — technical, legal, practical and, frankly, political — but we believe that this approach offers benefits to all stakeholders. If done right, the NTCRA option could result in the most protective and cost-effective remedy, as well as the fastest.

Subject to certain conditions, the Group is willing to negotiate appropriate terms and enter into an Administrative Order on Consent (“AOC”) with EPA pursuant to which the Group and other PRPs would perform the first phase of a NTCRA (“Phase One”) under EPA oversight. Phase One would consist of all of the work leading up to an approved Engineering Evaluation / Cost Analysis (“EE/CA”) or other final cleanup plan. In addition to preparing the EE/CA, the Phase One work would include a few discrete technical tasks that are needed to prepare an appropriate EE/CA, including a geotechnical investigation and focused risk assessments. We do not anticipate that these activities would be very lengthy or costly, but they are critical to the preparation of an appropriate EE/CA and thus are necessary if a NTCRA is to be workable.

The AOC would be limited to Phase One because it will take time for the PRPs to reach agreement on how to perform the remedy and to allocate its costs. The iterative approach that we are proposing here would allow for progress to be made on the NTCRA cleanup while the PRPs address allocation issues among themselves.

Set forth below is an outline of the framework and terms that the Group respectfully proposes for developing a NTCRA remedy at the Site.

1. **PRPs Perform Phase One under EPA Oversight.** The Phase One NTCRA work is performed by the PRPs under EPA oversight, and includes the following:
 - a. Focused ecological and human health risk assessments;
 - b. A focused geotechnical investigation, tailored to the needs of the remedy options being considered in the EE/CA;
 - c. A source control investigation¹;
 - d. Sediment dewatering treatability testing, some discrete additional sediment characterization, and sediment toxicology analysis; and
 - e. An EE/CA.
2. **Cleanup Levels.** The cleanup levels for the Site are based on the results of the focused risk assessments and the sediment toxicology analysis.

¹ The scope of the source control investigation will depend, in part, on our analysis of the sewer sampling that the City performed during the 2009-2010 winter season. As you know, we received those data just this week from the City and have not had time to evaluate them. However, even if the data are robust, there are other potential sources that need to be investigated to ensure that any remediation of the Site is not obviated by subsequent recontamination.

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3. **Site Boundary.** As reflected in EPA's Action Memo and other documents, the boundary of the Site is defined as the mouth of Yosemite Slough; it does not extend into South Basin.
4. **AOC.** Nos. 1-3 above are incorporated in an AOC with EPA. The AOC's scope of work includes all NTCRA Phase One activities through EPA approval of the EE/CA or other final cleanup plan. The AOC does not include implementation of the NTCRA remedy.
5. **Other PRPs.** EPA agrees to assist with obtaining increased participation from other third parties with interests at the Site, including other PRPs and the Navy.
6. **Confidential, Non-Binding Allocation Process.** The PRPs agree to develop a non-binding, confidential allocation process for the purpose of allocating responsibility for the Site. EPA agrees that it will not be a party to this process, but will help to facilitate it.

We believe that the approach outlined here ultimately will achieve cleanup of the Site in a manner that will be protective of human health and the environment, cost-effective, and on the fastest time table possible. We look forward to discussing this with EPA. As EPA's timeline is so short, we suggest that EPA convene another meeting of the parties soon to discuss this.

If EPA elects to proceed with its suggested alternative of listing the Site on the National Priorities List (the "NPL"), the Group is prepared to provide its input though the procedural guarantees that the NPL process provides. Frankly, that process affords the Group greater opportunities to address the technical and liability issues that have concerned us to date. However, it also would take a long time. The Site likely would not be remediated for several more years at least.

Thank you for your consideration. We look forward to hearing from you.

Sincerely,



Nicholas W. van Aelstyn

cc: Elaine M. O'Neil, Esq., City & County of San Francisco (*via email*)
John S. Roddy, Esq. City & County of San Francisco (*via email*)
Kathryn J. Tobias, Esq., California Department of Parks & Recreation (*via email*)
Mark A. Rigau, Esq., US DOJ for Defense Reutilization and Marketing Service (*via email*)